

REMARKS

Reconsideration and withdrawal of the examiner's rejections under 35 USC § 102 are respectfully requested in view of the above amendments and the following remarks. The applicant would like to thank the examiner for his time and kind cooperation in this matter.

Double Patenting

The examiner has provisionally rejected claims 1 and 5-37 under the judicially created doctrine of double patenting over claims 1-35 of copending Application No. 10/726,740. This is a provisional double patenting rejection since the conflicting claims have not yet been patented. The examiner asserts the following:

The subject matter claimed in the instant application is fully disclosed in the referenced copending application and would be covered by any patent granted on that copending application since the referenced copending application and the instant application are claiming common subject matter, as follows: The present application claims a silicone, a viscosity modifying agent which may be a perfume and a deposition aid. The copending application claims a silicone, perfume, and the identical deposition aid. Furthermore, there is no apparent reason why applicant would be prevented from presenting claims corresponding to those of the instant application in the other copending application.

In response, applicants respectfully assert that if the "provisional" double patenting rejection becomes the only rejection remaining in the application, the examiner is respectfully requested to withdraw the rejection allowing the instant case to issue thereby converting the provisional double patenting rejection to a double patenting rejection for Application No. 10/726,740. MPEP 804(I)(B), 8th Ed. Rev. – 3, Oct. 2005.

Claim Objections

The examiner has objected to claim 6 under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. In response, claim 6 has been canceled according to the examiner's kind suggestion.

35 USC § 102

The examiner has rejected claims 1, 2, 5-37 and 40-58 under 35 U.S.C. 102(e) as being anticipated by Hunter, et al., US 6,939,842, for reasons of record. The examiner further asserts that aminosilicones are well known in the art as volatile and of a low viscosity.

In response, claim 1 has been amended to clearly distinguish the claim over Hunter. Support for these amendments are as follows:

Viscosity (pg. 4, lines 11-12);

Soluble (pg. 3, line 35 – pg. 4 line 2);

Dissolved (pg. 3, lines 23-25);

Polysaccharide (pg. 16, lines 1-2 and pg. 17, line 6);

Molecular weight of the polysaccharide (pg. 22, lines 17-19); and

Amount of viscosity modifying agent (pg. 4, lines 14-15).

Hunter (US 6,639,842) is concerned with increasing the deposition of a silicone present in a laundry composition. The solution proposed in Hunter is to use a substituted polysaccharide which has additional grafted silicone chains present to enhance the silicone deposition (see col. 3, lines 37-40 and examples). The claims as now amended require both a high viscosity silicone and a viscosity modifier (volatile silicone, perfume, organic solvent and low viscosity silicone) dissolved within the silicone, to modify the viscosity of the silicone which results in increased deposition (evidenced by the instant examples).

Applicants respectfully submit that Hunter does not disclose or teach a (high viscosity) silicone in combination with a viscosity modifying agent. There is no example of such a combination in Hunter (all examples are of single silicones, not mixtures).

The Examiner appears to rely solely on claim 10 of Hunter to make silicone/amino silicone mixtures. This claim states, "wherein the silicone is selected from polydialkyl siloxanes, amine derivatives thereof of mixtures thereof". Although this is a disclosure of a potential mixture, it does not specifically disclose a (high viscosity) silicone in combination with from 5% to 40% of a viscosity modifying agent. There is no disclosure of whether this "amine derivative thereof" is of high or low volatility, or of high or low viscosity. There is no disclosure that any mixture would affect the viscosity of the silicone.

With regards to the weight range of 5 to 40%, there is no teaching in Hunter over how much of each part is present in any mixture. Hunter also does not disclose that the viscosity modifying agent is dissolved in the silicone.

In summary, applicants respectfully submit that Hunter does not clearly and unambiguously disclose or even suggest the above features (combination of silicone with a viscosity above 5,000 mPas with viscosity modifying agent; the weight range of the viscosity modifying agent; and the fact that the viscosity modifying agent is dissolved in the silicone), nor would the skilled person be led to this claimed combination absent impermissible hindsight.

The examiner has rejected claims 1, 2, 4-12, 30-32, and 34-48 under 35 U.S.C. 102(e) as being anticipated by Barnabas, et al., US 7,012,053; asserting that Barnabas, et al., teach fabric care compositions comprising a polysaccharide and wrinkle control agent (see abstract). An example of such a composition comprises 0.4% silicone/butylacrylate/acrylic acid copolymer, 1% of a silicone emulsion comprising silicone and an anionic/nonionic surfactant system, 0.04% perfume, 0.3% ethoxylated alcohol surfactant, and 0.5% silicone surfactant (col. 110, example IXc). As this reference meets all material limitations of the claims at hand, the reference is anticipatory.

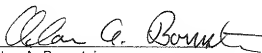
In response, applicants have amended claim 1 to recite a specific beta 1-4 polysaccharide to clearly distinguish the claims from Barnabas. Barnabas discloses the use of Arabinogalactans in a fabric care composition. These are described as beta 1-3 linked polysaccharides (see col. 103, lines 19 onwards). Other 'oligosaccharide mixtures' are described (col. 103 lines 30 onwards) – however, it is clear that these are mono/di/tri/tetra saccharides, and cannot thus have a molecular weight above 1,000. So beta 1,4 polysaccharides with a molecular weight above 1,000 are therefore not disclosed. In fact, as beta 1,3, polysaccharides are preferred – see col. 8, lines 44 onwards, this reference teaches away from the present invention with respect to the use of beta 1, 4 polysaccharides.

CONCLUSION

In summary, claims 1, 5, 7, 9-13, 22, 30, 31, 38-42, 46-48 and 58 have been amended and claims 6, 14-17 have been cancelled as being redundant. No new matter has been added by way of this amendment.

In light of the above amendments and remarks, applicants submit that all claims now pending in the present application are in condition for allowance. Reconsideration and allowance of the application is respectfully requested. The examiner is invited to contact the undersigned if there are any questions concerning the case.

Respectfully submitted,


Alan A. Bornstein
Registration No. 40,919
Attorney for Applicant(s)

AAB/ss
(201) 894-2180